



Corporate Transparency Act Team

Small Businesses:

Prepare to Report under the New Federal Corporate Transparency Act

Syracuse ♦ Ithaca

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Effective January 1, 2024, many existing corporations, limited liability companies, partnerships and similar entities became subject to Federal requirements to report to the Financial Crime Enforcement Network, a bureau of the U.S. Treasury Department (FinCEN), personal information of individuals who are their senior officers and other beneficial owners. Initial reports must be filed with FinCEN no later than January 1, 2025. We recommend that the filing occur well before the deadline as FinCEN has had serious systems capacity issues.

Is my small business a Reporting Company that must report to FinCEN?

Very likely, YES.

A Reporting Company under the Corporate Transparency Act (the Reporting Act) includes any corporation, limited liability company, partnership or similar entity which is created by filing a document with a state government unless one of the limited exemptions in the Reporting Act applies. An entity formed by filing a document with a foreign government and registered to do business in the U.S. may also be a Reporting Company.

The Reporting Act identifies 23 types of entities that are exempt from reporting. Most apply to entities regulated or supervised by federal or state governments, such as banks, insurance companies, broker-dealers, state and local governments, certain federally tax-exempt entities and wholly owned subsidiaries of these entities.

Large operating companies are also exempt.

Does my business qualify for an exemption as a Large Operating Company?

A Large operating company is defined as any entity that satisfies all three of the following:

- A. Employs more than 20 full time employees in the United States, with “full time employee in the United States”(see below) having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3 , except that the term “United States” as used in 26 CFR 54.4980H-1(a) and 54.4980H-3 has the meaning provided in § 1010.100(hh);
- B. Has an operating presence at a physical office within the United States; and
- C. Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity’s IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of

corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

An employee is generally considered full-time if such individual provides at least 30 hours per week or 130 hours per calendar month of services to that entity. For the employment test, employees cannot be aggregated with sister companies or other affiliates.

This exemption requires continuous compliance. For example, a business whose employees dipped below 20 hours would no longer be exempt.

If your business is wholly owned, directly or indirectly, by a large operating company, it may be exempt from the reporting requirements.

What information must a Reporting Company report?

A Reporting Company must report information about the company and about any individual who is a beneficial owner of the Reporting Company.

A Reporting Company must report for each individual who is a beneficial owner:

- Full legal name;
- Date of birth;
- Residential or business address; and
- A "unique identifying number" from a driver's license, passport or other government-issued identification card.
- An image of that driver's license, passport or other government-issued identification card.

A Reporting Company must report the following information about itself:

- The full legal name of the Reporting Company;
- Any trade name or "doing business as" name of the Reporting Company;
- A complete current address consisting of: (1) In the case of a Reporting Company with a principal place of business in the United States, the street address of such principal place of business; and (2) In all other cases, the street address of the primary location in the United States where the Reporting Company conducts business;
- The jurisdiction of formation of the Reporting Company;
- For a foreign Reporting Company, the State or Tribal jurisdiction where such company first registers; and
- The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the Reporting Company, or where a foreign Reporting Company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

Who is a beneficial owner?

Under the law, a "beneficial owner" is generally any individual who, directly or indirectly, through contract, arrangement, understanding, relationship or otherwise:

- Owns or controls 25% or more of an interest in the Reporting Company; or
- Otherwise exercises substantial control over the Reporting Company (e.g., President, CFO, Manager).

A Reporting Company can have multiple beneficial owners. FinCEN expects that every Reporting Company will be substantially controlled by one or more individuals, and therefore that every Reporting Company will be able to identify and report at least one beneficial owner to FinCEN.

When Must Information be Filed with FinCEN?

Initial reports for companies in existence prior to January 1, 2024, must be filed not later than January 1, 2025.

What About Changes in Company or Beneficial Owner Information?

The Reporting Act also requires prompt reporting (usually within 30 days of the change) to FinCEN of any changes in (1) the entity's filing status (from exempt to Reporting Company) or (2) the information about the entity or its beneficial owners (for example, addition of new beneficial owners, new residential address for a beneficial owner, new driver's license or passport for a beneficial owner, new dba for Reporting Company).

What are the Penalties for Failing to Report or for Making False Reports?

A violation under the Reporting Act consists of:

- A Reporting Company's willful failure to report complete or updated beneficial ownership information
- A Reporting Company's willful provision of or attempt to provide false or fraudulent beneficial ownership information
- A person willfully causing a Reporting Company not to file a required report or to report incomplete or false beneficial ownership information

Civil Penalties: Up to \$500 for each day that the violation continues

Criminal Penalties: Imprisonment for up to two years and/or a fine of up to \$10,000

Senior officers and principals of an entity that fails to file a required report may be held accountable for that failure.

How is Information Reported to FinCEN?

A Reporting Company files the information on the FinCEN website (www.fincen.gov). FinCEN offers a unique identifier called the FinCEN Identifier to be obtained by Reporting Companies or individuals that may help streamline reporting.

Where Can My Small Business find more Information?

FinCEN has several resources available on its website including on its website (www.fincen.gov) including a Small Business Entity Compliance Guide, [BOI Small Compliance Guide v1.1 \(fincen.gov\)](http://BOI Small Compliance Guide v1.1 (fincen.gov)).

Bousquet Holstein's CTA team is available to answer your questions or assist with compliance. Please contact Jean Everett, Erika Hooker or Maria Zumpano with questions.

Getting Started

First, determine whether the business is exempt. This determination depends on the facts and should be determined by closely reviewing the Reporting Act and consulting with an attorney.

Second, if the business is not exempt and is a Reporting Company, determine the individuals who are beneficial owners of the Reporting Company. This determination depends on the facts and should be determined by closely reviewing the Reporting Act and consulting with an attorney.

Third, notify all of the individuals who may be or may become beneficial owners of the new reporting requirements and obtain an agreement from all of them to report the required information to the Reporting Company upon request and to update the business with any information changes.

Fourth, request and obtain the required information from each beneficial owner.

Fifth, determine if a third-party reporting service makes sense for the business.

The Reporting Company is ready to file with FinCEN or have the third-party reporting service file.